



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2020-12

Trey Lam, Executive Director
Oklahoma Conservation Commission
2800 N. Lincoln Boulevard, Suite 200
Oklahoma City, Oklahoma 73105

October 20, 2020

Dear Executive Director Lam:

This office has received your request for an official Attorney General Opinion in which you ask, in effect, the following questions:

1. **The boundaries between certain counties in Oklahoma are demarcated in OKLA. CONST. art XVII, § 8 by the “center line” of a particular watercourse. Are such boundaries subject to the laws governing accretion, reliction, and avulsion?**
2. **In situations where a county’s boundary is the “center line” of a watercourse under OKLA. CONST. art XVII, § 8, does 19 O.S.2011, § 36, which provides that changes in bounding watercourses brought about by accretion, reliction, or avulsion do not affect the “taxable situs” of property, also apply to the county’s jurisdictional boundary?**

I.
BACKGROUND

Article XVII, Section 8 of the Oklahoma Constitution delineates the geographic boundaries and county seats of 75 of the 77 Oklahoma counties.¹ OKLA. CONST. art. XVII, § 8. In many cases, Section 8 assigns the “center line” of a watercourse, such as a river or creek, as the boundary between counties. For instance, as you reference in your request, the Constitution designates the northern portion of the boundary between Craig and Ottawa counties as running “along the center line of [the] Neosho River” to its intersection with “the range line between ranges twenty-one and twenty-two East.” *Id.*

¹ Harmon and Cotton counties were created by special elections in 1909 and 1912, respectively. See Linda D. Wilson, *Harmon County*, and Larry O’Dell, *Cotton County*, THE ENCYCLOPEDIA OF OKLAHOMA HISTORY AND CULTURE, available at www.okhistory.org (last visited October 7, 2020).

While this method of setting national, state, and local boundaries is common, it presents jurisdictional challenges because the location of a watercourse may change over time. *See, e.g., Louisiana v. Mississippi*, 466 U.S. 96 (1984) (addressing dispute over whether—and during what years—the “bottom hole” of oil and gas well under the Mississippi River was in Louisiana or Mississippi); *Arkansas v. Tennessee*, 246 U.S. 158 (1918) (addressing dispute as to the location of a portion of the border between Arkansas and Tennessee following abrupt shift in the Mississippi River); *Olsen v. Jones*, 1966 OK 48, 412 P.2d 162 (appeal of quiet title action as to tract deemed to be in Texas in 1899 but in Oklahoma by 1940 due to change in course of the Red River). To help resolve such challenges, courts have developed legal doctrines relevant to your inquiry: accretion, reliction, and avulsion.

The doctrines of accretion, reliction, and avulsion determine the impact on a property boundary when a change occurs in the location of a bounding watercourse. Accretion refers to “the process by which the area of owned land is increased by the gradual deposit of soil due to the action of a bounding river or other body of water. Accretion occurs when the change in the river is gradual and imperceptible.”² *Olsen*, 1966 OK 48, ¶ 24, 412 P.2d at 167 (quoting *Bauman v. Choctaw-Chickasaw Nations*, 333 F.2d 785, 789 (10th Cir. 1964)). Reliction is similar to accretion in result, but is caused by the uncovering of land by gradually receding waters. *Stop the Beach Renourishment, Inc. v. Florida Dept. of Env'tl. Prot.*, 560 U.S. 702, 708 (2010); *see also* R. Clark Musser, *Easy Come, Easy Go, Or Avulsion Plus Accretion Does Not Equal Reliction*, 48 OKLA. BAR J. Q-177 (1977). Accretion and reliction thus may change the size and/or shape of a parcel of land, but they do not operate so as to shift the location of that parcel from one side of a watercourse to the other.

On the other hand, avulsion is “the sudden change of the banks of a stream such as occurs when a river forms a new course by going through a bend, the sudden abandonment by a stream of its old channel and the creation of a new one, or a sudden washing from one of its banks of a considerable quantity of land and its deposit on the opposite bank.” *Olsen*, 1966 OK 48, ¶ 22, 412 P.2d at 167 (citation omitted); *see also Arkansas v. Tennessee*, 246 U.S. at 162 (describing avulsion of the Mississippi River resulting in boundary dispute between Arkansas and Tennessee). It is “the gradualness of the [accretive] process that distinguishes [it] from the more rapid, easily perceived, and sometimes violent, shifts of land incident to floods, storms or channel breakthroughs known as ‘avulsion.’” *Bauman*, 333 F.2d at 789. And so while accretion and reliction change only the size and/or shape of a parcel bounded by a watercourse, an avulsion can result in a parcel originally located on one side of a watercourse ending up on the opposite side.

In Oklahoma, the Legislature has codified the effect of accretion and reliction on property rights, as established under the common law. *See Goins*, 1938 OK 10, ¶¶ 6–8, 80 P.2d at 270. Title 60, Section 335 of the Oklahoma Statutes provides as follows:

² “[T]he test for determining if the change in the river is gradual and imperceptible is that though the witnesses may see from time to time that progress has been made, they could not perceive it while the process was going on.” *Goins v. Merryman*, 1938 OK 10, ¶ 8, 80 P.2d 268, 270 (quotation marks and citations omitted).

Where from natural causes land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material or by the recession of the stream, such land belongs to the owner of the bank, subject to any existing right of way over the bank.

60 O.S.2011, § 335; *see also Stone v. McFarlin*, 249 F.2d 54, 56 (10th Cir. 1957) (“Oklahoma adheres to common law that accretions become the property of the owner of the adjoining land.” (citing 60 O.S.1951, § 335)).

The effect of certain avulsive events has also been codified:

If a river or stream carries away, by sudden violence, a considerable and distinguishable part of a bank, and bears it to the opposite bank, or to another part of the same bank, the owner of the part carried away may reclaim it within a year after the owner of the land to which it has been united takes possession thereof.

60 O.S.2011, § 336. The Oklahoma Supreme Court has recognized that Section 336 is applicable only to a specific type of avulsion – those involving “mass removals that can be identified subsequently.” *Mapes v. Neustadt*, 1946 OK 279, ¶ 6, 173 P.2d 442, 443. Because there is “no statute dealing with avulsion in the sense of a sudden change in the channel of a river” the Court acknowledged the common law principle that, in such cases, “avulsion does not change the boundaries nor affect titles[.]” *Id.*³

In sum, under the common law and Oklahoma statutory law, if a property boundary is marked by a watercourse, the gradual processes of accretion and reliction result in a dynamic, constantly-shifting boundary, whereas the sudden process of avulsion leaves the boundary in the middle of the former channel. *See Louisiana v. Mississippi*, 466 U.S. at 100; *Arkansas v. Tennessee*, 246 U.S. at 175.⁴ The Oklahoma Court of Civil Appeals described the rationale underlying these rules as being founded in the reasonable expectations of property owners:

It is believed that parties to conveyances wherein a flowing river is a boundary understand and expect the normal fluctuations caused by the constant processes of nature and understand that the river is the boundary regardless of gradual shifts in its bed. In such cases the value of water access is continued in spite of slight, imperceptible shifts. As to avulsive shifts, however, these expectations do not hold

³ It is worth noting that another provision may apply in limited circumstances to affect private property rights—but not necessarily jurisdictional boundaries—following an avulsion. Title 60, Section 340 provides that “[i]f a stream forms a new course, abandoning its ancient bed, the owners of the land occupied take, by way of indemnity, the ancient bed abandoned, each in proportion to the land of which he has been deprived.”

⁴ While a common feature of avulsions is the creation of a new primary channel for the watercourse, the former channel is often not left completely dry. Instead, a lesser amount of water continues to flow in the former channel for a period of time. “So long as [the former channel] remains a running stream, the boundary marked by it is still subject to be changed by erosion and accretion; but when the water becomes stagnant, the effect of these processes is at an end; the boundary then becomes fixed in the middle of the channel . . . and the gradual filling up of the bed that ensues is not to be treated as an accretion to the shores but as an ultimate effect of the avulsion.” *Arkansas v. Tennessee*, 246 U.S. at 175.

for they are not reasonably expectable although they may be foreseen in a general sense, i.e. everyone knows that they do occur.

Cherokee South Corp. v. Ledford, 1979 OK CIV APP 47, ¶ 4, 603 P.2d 351, 352.

II. DISCUSSION

To determine whether the doctrines of accretion, reliction, and avulsion apply to county boundaries in Oklahoma, we begin with the recognition that these common law principles have been widely adopted by Oklahoma courts to resolve disputes over private property rights. *See, e.g., Nilsen v. Tenneco Oil Co.*, 1980 OK 14, 614 P.2d 36; *Olsen*, 1966 OK 48, 412 P.2d 162; *State ex rel. Com'rs of Land Office v. Warden*, 1948 OK 165, 198 P.2d 402; *Mapes*, 1946 OK 279, 173 P.2d 442; *Goins*, 1938 OK 10, 80 P.2d 268; *Willet*, 1935 OK 1178, 55 P.2d 90; *Hunzicker v. Kleeden*, 1932 OK 731, 17 P.2d 384. Moreover, the Oklahoma Supreme Court has found that state statutes relating to these doctrines are generally “declaratory of the common law.” *Goins*, 1938 OK 10, ¶ 6, 80 P.2d at 270.

With respect to jurisdictional boundaries, the doctrines have been applied by the U.S. Supreme Court to settle boundary disputes between states. *See Louisiana v. Mississippi*, 466 U.S. 96, *Arkansas v. Tennessee*, 246 U.S. 158; *see also State ex rel. Com'rs of Land Office v. Warden*, 1948 OK 165, 198 P.2d 402 (quoting the U.S. Supreme Court’s conclusion that the law of accretion controls not only in respect to rights of individual land owners, but also in respect to state boundaries). And federal courts and other state courts have relied on them to resolve questions as to county boundaries. *See, e.g., Matthews v. McGee*, 358 F.2d 516 (8th Cir. 1966) (applying Arkansas law); *Woodland v. Woodland*, 147 N.W.2d 590 (N.D. 1966); *Randolph v. Moberly Hunting & Fishing Club*, 15 S.W.2d 834 (Mo. 1929) (en banc); *Dye v. Anderson Tully Co.*, 385 S.W.3d 342 (Ark. Ct. App. 2011); *Baxter v. Utah Dept. of Transp.*, 783 P.2d 1045 (Utah Ct. App. 1989). Indeed, this appears to be the general rule:

An artificial or sudden change, as by avulsion, in the course of a stream forming the boundary between counties, which causes a new channel, does not operate to change the legal boundary between the counties. However, the rule is otherwise as to a natural change, as by accretion, which is gradual and imperceptible; where the bed of a navigable river serves as the boundary between two counties, the boundary between the counties moves with the movement of the navigable river by the process of accretion.

20 C.J.S. *Counties* § 18 (June 2020 Update).

Based on these authorities, this common law rule applies to county boundaries in Oklahoma unless clearly abrogated by statute. *See* 12 O.S.2011, § 2; *Tate v. Browning-Ferris, Inc.*, 1992 OK 72, ¶ 11, 833 P.2d 1218, 1225 (providing that the common law remains in full force in Oklahoma, unless a statute explicitly provides to the contrary). As you point out in your request, one statute

that bears on this question is Section 36 of Title 19 of the Oklahoma Statutes, which provides as follows:

After the first day of January, 1963, where any county is bounded by the middle of the channel of any stream or watercourse, any change of such channel, whether by accretion, reliction, or avulsion, shall not bring about a change in the taxable situs of the property, and for all county and state purposes the boundary line will remain as originally shown on the tax rolls. Provided, that, as to such property which may have become subject to litigation as a result of being carried on the tax rolls of two or more counties prior to the enactment of this section, or shall subsequently become subject to litigation as a result of being carried on the tax rolls of two or more counties without either being prior in point of time, such dispute shall be resolved by final decree of the court.

19 O.S.2011, § 36. The first clause of this provision requires that for tax purposes, property within a county that is bounded by a watercourse shall remain as part of that county, regardless of the effects of accretion, reliction or avulsion. As a practical matter, this merely restates and makes clear the common law rule because, while accretion and reliction may change the size and/or shape of a parcel, they will not result in the parcel moving from one side of a watercourse to the other. Likewise, they will not result in a parcel moving across county borders. Put differently, accretion and reliction will not change the location of a parcel within a given county bounded by a watercourse and therefore, as confirmed by the statute, such actions of the watercourse will not change the taxable situs of the property. Meanwhile, under both the statute and the common law, avulsion never changes a boundary defined by a watercourse.

The second clause uses more expansive language, stating “for all county and state purposes the boundary line will remain as originally shown on the tax rolls.” 19 O.S.2011, § 36. This too merely restates the practical effect of the common law rule because, while accretion and reliction may alter the size and/or shape of a parcel (or an entire state or county), they will not change the location of a parcel as reflected on the tax rolls. And neither will avulsion, under both the statute and the common law.

This reading is confirmed by the text and context of the statute. *See State v. Tate*, 2012 OK 31, ¶ 7, 276 P.3d 1017, 1020. (“Words and phrases of a statute are to be understood and used not in an abstract sense, but with due regard for context, and they must harmonize with other sections of the Act.”); *Anderson v. Eichner*, 1994 OK 136, ¶ 13 n.25, 890 P.2d 1329, 1338 n.25 (“[I]n fulfilling our responsibility in interpreting legislation, we must not be guided by a single sentence or member of a sentence, but should look to the provisions of the whole law, and to its object and policy.” (quoting *Richards v. United States*, 369 U.S. 1, 11 (1962))); *Clifton v. Clifton*, 1990 OK 88, ¶ 7, 801 P.2d 693, 696 (stating that statutory language “cannot be read in isolation,” but rather its meaning must be considered in the context of other portions of the relevant provision).

As discussed above, the opening clause of Section 36 refers to a narrow situation: in a county bounded by a watercourse, changes in the watercourse that result from accretion, reliction, or avulsion “shall not bring about a change in *the taxable situs* of the property”—that is, regardless of how a property line may change by action of the watercourse, that property will always remain

in the same county for tax purposes. 19 O.S.2011, § 36 (emphasis added).⁵ Next, the clause at issue reads “and for all county and state purposes the boundary line will remain as originally shown *on the tax rolls*.” *Id.* (emphasis added). But tax rolls are not survey documents designed to reflect the precise lines of county or parcel boundaries. A tax roll is simply “a record of the properties in a taxing district that includes the taxes due and paid on each property and is sometimes combined with a record of assessed values.” *Tax Roll*, MERRIAM-WEBSTER, www.merriam-webster.com; *see generally* 68 O.S.Supp.2019, § 2868 (setting forth requisite contents of tax rolls), *McMullan v. Cty. Bd. of Tax Roll Corrs.*, 2005 OK CIV APP 61, ¶ 6, 119 P.3d 781, 785 (describing tax rolls). The purpose of a tax roll is to identify taxable parcels within a county, the assessed value of those parcels, and the tax obligations associated with the parcels, not to reflect precise county boundary lines. Thus, under both the statute and the common law, while the boundary of a parcel may shift by accretion or reliction, the location of that parcel within a given county will not change, and that location is as originally shown on the tax rolls of the respective counties.

Finally, the last sentence of Section 36 hints at the larger context behind the provision:

Provided, that, as to such property which may have become *subject to litigation as a result of being carried on the tax rolls of two or more counties* prior to the enactment of this section, or shall subsequently become subject to litigation as a result of being carried on the tax rolls of two or more counties without either being prior in point of time, such dispute shall be resolved by final decree of the court.

19 O.S.2011, § 36 (emphasis added). Based on this language, it appears that Section 36 was enacted to provide clarity as to parcels that had been taxed by—or at least “carried on the tax rolls” of—two or more counties. In doing so, the statute confirms what is already true under the common law: a parcel’s location within a given county does not change by accretion or reliction (as a practical matter) or by avulsion (as a legal matter).

Taken as a whole, Section 36 of Title 19 dictates that, as of January 2, 1963, a given parcel of land is permanently deemed to be part of the county in which the parcel was originally shown on county tax rolls. Regardless of any changes in the size or shape of the parcel by the processes of accretion, reliction, or avulsion, the county in which the parcel is taxed will remain unchanged. Thus, the statute clarifies the issue of county situs of a given parcel of land, but it does not change the common law with respect to jurisdictional county boundaries.

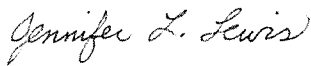
⁵ The legal term “situs” simply refers to “[t]he location or position (of something) for legal purposes[.]” *Situs*, BLACK’S LAW DICTIONARY (11th Ed. 2019).

It is, therefore, the official Opinion of the Attorney General that:

1. The boundaries between counties in Oklahoma that are demarcated in OKLA. CONST. art XVII, § 8 by the "center line" of a particular watercourse are subject to the common law governing accretion, reliction, and avulsion. *See, e.g., Louisiana v. Mississippi*, 466 U.S. 96 (1984); *Arkansas v. Tennessee*, 246 U.S. 158 (1918); *Olsen v. Jones*, 1966 OK 48, 412 P.2d 162; *Matthews v. McGee*, 358 F.2d 516 (8th Cir. 1966); *Woodland v. Woodland*, 147 N.W.2d 590 (N.D. 1966); *Randolph v. Moberly Hunting & Fishing Club*, 15 S.W.2d 834 (Mo. 1929).
2. Title 19, Section 36 of the Oklahoma Statutes does not alter the common law rules governing accretion, reliction, and avulsion when determining county boundaries for jurisdictional purposes.



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